

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN MANUEL JUAREZ,  
  
Petitioner,  
  
v.  
  
ADMINISTRATIVE REVIEW 602  
OFFICE, UNITED STATES DISTRICT  
COURT,  
  
Respondents.

No. 1:22-cv-01151-SKO (HC)

**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION  
TO SUMMARILY DISMISS PETITION**

**[THIRTY DAY OBJECTION DEADLINE]**

Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. He filed the instant petition on September 9, 2022. The petition does not challenge the underlying conviction; rather, it presents various claims concerning the conditions of his confinement. For this reason, the Court will recommend it be DISMISSED.

**DISCUSSION**

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of

1 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to  
2 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.  
3 2001).

4 B. Civil Rights Claims

5 Petitioner does not challenge his conviction. Rather, he complains that prison staff have  
6 confiscated his private property, to wit, a brochure deemed obscene material, in violation of his  
7 constitutional rights. He asks that his brochure be returned and he be awarded the sum of  
8 \$14,000,000.00.

9 A habeas corpus petition is the correct method for a prisoner to challenge the "legality or  
10 duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser  
11 v. Rodriguez, 411 U.S. 475, 485 (1973)). In contrast, a civil rights action pursuant to 42 U.S.C. §  
12 1983 is the proper method for a prisoner to challenge the conditions of confinement. McCarthy v.  
13 Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499. Petitioner's civil rights claims  
14 are not cognizable in a federal habeas action and must be dismissed. Petitioner must seek relief  
15 for his complaints by way of a civil rights action.

16 In Nettles v. Grounds, 830 F.3d 922, 936 (9th Cir. 2016), the Ninth Circuit held that a  
17 district court has the discretion to construe a habeas petition as a civil rights action under § 1983.  
18 However, recharacterization is appropriate only if it is "amenable to conversion on its face,  
19 meaning that it names the correct defendants and seeks the correct relief," and only after the  
20 petitioner is warned of the consequences of conversion and is provided an opportunity to  
21 withdraw or amend the petition. Id. Here, the Court does not find recharacterization to be  
22 appropriate. Petitioner does not name the proper defendants and the claims are not amenable to  
23 conversion on their face. Accordingly, the Court should not exercise its discretion to  
24 recharacterize the action.

25 Therefore, the Court will recommend that the action be dismissed and the Clerk of Court  
26 be directed to send Petitioner a blank civil rights complaint.

27 **ORDER**

28 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District

Judge to the case.

**RECOMMENDATION**

Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be DISMISSED and the Clerk of Court be DIRECTED to provide Petitioner with a blank civil rights complaint form.

This Findings and Recommendation is submitted to the United States District Court Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, Petitioner may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

IT IS SO ORDERED.

Dated: September 12, 2022

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE